

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

_____))
In the Matter of)
ASAP Paging, Inc.)
Petition for Preemption of)
Public Utility Commission of Texas)
Concerning Retail Rating of Local Calls)
to CMRS Carriers)

WC Docket 04-6

WRITTEN *EX PARTE* REPLY TO CENTURYTEL AUGUST 20 *EX PARTE* NOTICE

NOW COMES ASAP PAGING, INC. (“ASAP” or “Petitioner”) and submits this
Written *Ex Parte* Reply to CenturyTel’s August 20 *Ex Parte* Notice.

On August 20, 2004 CenturyTel, Inc. (“CenturyTel”) submitted a notice of *Ex Parte*
communication with several individuals in the Pricing Policy Division of the Wireline
Competition Bureau that took place on August 19. This written *Ex Parte* Reply by ASAP
Paging, Inc. (“ASAP”), responds to the statements made by CenturyTel.

First, the Commission must remember that this is not just a “wireline” issue. ASAP is a
CMRS provider, with Radio Station Authorizations designated as “interconnected.” As such,
ASAP lawfully obtained numbering resources for the local calling area served by CenturyTel.
Since this matter concerns CMRS, it cannot be resolved only under the rules and concepts
applicable to wireline carriers. CenturyTel’s presentation completely ignores this, except to the
extent CenturyTel wrongly justifies the imposition of toll on calls to numbers associated with the
same mandatory local calling area on the fact that it is not possible to determine the location of
the wireless customer at the time of any given call. We believe that the Wireless
Telecommunications Bureau must necessarily be heavily involved.

Second, CenturyTel persists in confusing and conflating the rules applicable to *retail*
rating of calls by its customers with those applicable to **wholesale intercarrier compensation**

as between two carriers for the traffic. CenturyTel then misconstrues the compensation rules to mean it can shift transport cost responsibility for calls originated by its subscribers. TPUC directly held, in any event, that CenturyTel is not bearing any out of area transport cost responsibility.

Third, CenturyTel's assertion that the filed tariff doctrine immunizes its actions from FCC review fails for several reasons. The TPUC decision interpreting CenturyTel's tariff is the subject of an administrative appeal to state court, so it is not yet a final decision. The interpretation is incorrect in any event and is inconsistent with the interpretation applied by this Commission to quite similar tariff terms in the *Starpower* case. Even if CenturyTel is right about what its tariff means, to the extent the tariff terms result in a conflict with federal rules, the federal rules preempt the tariff and it cannot be enforced. For example, CenturyTel's tariff interpretation would similarly "require" Century to impose toll on numbers associated with a rate center in the local calling area that were formerly held by CenturyTel, SBC or Verizon but then ported to a wireless carrier that has no "wireline presence" in the area or an interconnection agreement. But the porting rules are clear that the rate center designation – and therefore the associated retail rating – does not change with a port and no POI or agreement is required. Any state tariff that would impose toll on calls to local numbers that are ported would have to fall.

CenturyTel's arguments and claims, if allowed, will allow it to assess toll charges on any of its customers that call any CLEC and any CMRS provider, including Cell and PCS, that has a switch outside of CenturyTel's local calling area. CenturyTel has fashioned a very strategic end run around dialing parity, federal control of numbering resources, wireline to wireless number portability and, ultimately, competition. It cannot be allowed. The FCC has already resolved each issue against CenturyTel's position and must preempt.

ASAP will expand on these points below.

A. THIS IS NOT JUST A “WIRELINE MATTER”; IMPORTANT WIRELESS RULES AND PRECEDENT MUST ALSO BE CONSIDERED.

ASAP is a licensed CMRS carrier, and has RSAs to provide coverage¹ (among other places) in the San Marcos area and its environs.² Pursuant to these FCC RSAs, ASAP sought and obtained numbering resources in the Kyle, Fentress and Lockhart rate centers, each of which are “mandatory local” to San Marcos.³ ASAP is entitled to numbering resources in those areas under 47 C.F.R. § 52.15(g)(2)(i), and demonstrated that entitlement by showing NANPA a copy of its federal RSA.⁴ Section 52.15(g)(2)(i) grants numbering resources only when an applicant “is authorized to provide service in the area for which numbering resources are being requested.” What CenturyTel refuses to recognize is that ASAP is authorized to provide “interconnected”⁵ service and is providing service in San Marcos, Kyle, Fentress and Lockhart – which are all in the same mandatory local calling area. ASAP was and is entitled to numbering resources for that

¹ A CMRS carrier’s “‘coverage area’ is the area in which wireless service can be received from the wireless carrier.” Memorandum Opinion and Order, *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket 95-115, FCC 03-284 22 (Nov. 10, 2003) (“Wireline-Wireless Portability Order”).

² See TPUC Docket 25673, Order, page 2; FOF Nos. 1, 17, 18. See also, FCC WTB ULS, Call Sign WNZY253, Location Summary for site 3, <http://wireless2.fcc.gov/UlsApp/UlsSearch/licenseLocSum.jsp?pageNumToReturn=1&licKey=1698555>; FCC WTB ULS, Call Sign WPJW940, Location Summary for sites 2 and 5, <http://wireless2.fcc.gov/UlsApp/UlsSearch/licenseLocSum.jsp?licKey=1742118>; FCC WTB ULS, Call Sign WPKZ412 for site 1, <http://wireless2.fcc.gov/UlsApp/UlsSearch/licenseLocSum.jsp?licKey=1753596>; and FCC WTB ULS, Call Sign WPXQ418, Location Summary for sites 2 and 3, <http://wireless2.fcc.gov/UlsApp/UlsSearch/licenseLocSum.jsp?licKey=2515177>. Each of the licenses is designated as “interconnected.”

³ See TPUC Docket 25673, FOF 33, 34, 43, 44.

⁴ See *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Rulemaking, 15 FCC Rcd 7574, 7613 n. 178 (2000); NANPA Publication “Effects of the FCC’s NRO Order on Code Administration Updated 06/15/2004” available at http://www.nanpa.com/pdf/nro_effects.pdf.

⁵ ASAP is indirectly interconnected with CenturyTel via SBC’s Greenwood tandem in Austin using Type 2A interconnection to reach each end office that is connected to the tandem, including CenturyTel’s San Marcos end office. The FCC has rejected ILEC claims that CMRS carriers’ cannot interconnect with independent telcos through an RBOC tandem – and must instead establish direct

area, because it provides service and has coverage there. Its customers have a need for a local number in that area, since that is where they live or do business. One of the ISPs that CenturyTel deems to be physically located in Austin is San Marcos Internet and its business and servers are located in San Marcos.

CenturyTel continually points out that ASAP cannot demonstrate that its customer is physically located within the local calling area at the time of any given call, and therefore justifies a proxy location (ASAP's Austin switch) for the customer's actual "physical" location – even though it is clear none of ASAP's customers are ever physically in the guts of ASAP's switch.⁶ CenturyTel then refuses to recognize the rate center assignment of ASAP's Kyle, Fentress and Lockhart NXXs – indeed it functionally change the rate center assignments of them - and imposes toll on all calls, regardless of the rate center association of the number. Because the switch is in Austin, CenturyTel claims the calls go "to Austin."⁷ But the essential failure of this "logic" is that wireless carriers have absolutely no obligation to assign numbers to customers that are located in the rate center with which the number is associated but they are still entitled to local numbers and local retail rating if the calls are between two numbers that are associated with the same mandatory local calling area.⁸ The entire exercise of "finding the

interconnection. See FCC's Response to Petition for Review, *USTA v. FCC*, No. 03-1414 and 03-1443 Before the Court of Appeals for the D.C.Circuit, pp. 32-33 ("*FCC Number Portability Response Brief*").

⁶ Instead, the customers are in fact likely to be in the local calling area since that is where they live or do business for the most part.

⁷ CenturyTel *Ex Parte* at 4.

⁸ "Wireline-Wireless Portability Order" at ¶ 11; North American Numbering Council LNPA Working Group Report on Wireless Wireline Integration, p. 33 May 8, 1998 (NANC Report to FCC) available at <http://www.fcc.gov/wcb/tapd/Nanc/rptnancr.doc>:

2.3 Wireless NXX Assignments

NXX codes that are assigned to wireless carriers are associated to a specific wireline rate center and are communicated via the LERG. These are assigned to wireline rate centers in order to accomplish land to mobile rating. However, once NPA-NXXs are assigned to a wireless carrier, wireless carriers may select any one of their NPA-NXXs when allocating numbers to a subscriber. The WSP may select a particular NPA-NXX value based on customer desires of calling areas for land to mobile calls, mobile to land calls, or a combination of both. Alternatively, a wireless carrier may choose to select an NPA-NXX value that

customer” and deeming the switch to be the customer location is useless and irrelevant. The deeming exercise by looking to the intermediate switch is irrational and capricious.

CenturyTel’s premise that an individual call is properly **retail** rated as either local or toll based on the actual physical location of the calling and called party is simply incorrect, at least in the mobile service context.⁹ That has never been the rule. CMRS carriers have been entitled to

is physically closest to the subscriber billing address. There are no state or federal requirements to associate an NPA-NXX for a new subscriber based on their residence, billing, or other location. (emphasis added)

Appendix D (Wireless Wireline Integration Task Force Rate Center Issue Position Paper) § 1.3, Part II.D.2:

Because most wireless applications include terminal mobility, there is no technical requirement for association of the telephone number and a geographic location of the user.

See also, Interconnection Between Wireline Telephone Carriers and Radio Common Carriers Engaged in the Provision of Domestic Public Land Mobile Radio Service Under Part 21 of the Commission's Rules (Domestic Public Land Mobile Radio Service), 63 FCC 2d 87, 88; 1977 WL 38679 (F.C.C.) (1977); Interconnection Between Wireline Telephone Carriers and Radio Common Carriers Engaged in the Provision of Domestic Public Land Mobile Radio Service under Part 22 of the Commission's Rules (Memorandum of Understanding), 80 FCC 2d 352, 1980 WL 121568 (F.C.C.) (1980); Notice of Proposed Rulemaking, In the Matter of Numbering Resource Optimization; Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission's Rule Prohibiting Technology-Specific or Service-Specific Area Code Overlays; Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes; California Public Utilities Commission and the People of the State of California Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code, FCC 99-122, CC Docket No. 99-200; RM No. 9258; NSD File No. L-99-17; NSD File No. L-99-36, 14 FCC Rcd 10322, 1999 FCC LEXIS 2451, (Rel. Jun. 2, 1999) (“NRO NPRM”):

112. Because it is typically necessary for each facilities-based service provider to be assigned an NXX code for each rate center in which it provides service, the rate center structure places a great strain on numbering resources. Moreover, although wireless carriers offer larger calling areas and thus require fewer NXX codes for the wireless service, they often must request as many NXX codes as are required to permit wireless customers to be called by wireline customers on a local basis.(note 174)

n174 NANC Report at 1.5.2; Nextel comments at 10. Wireless carriers, however, often require fewer NXX codes than wireline carriers because they have larger local service areas. Bell Atlantic Mobile comments at 12. We note that, to enable the rating of incoming wireline calls as local, wireless carriers typically associate NXXs with wireline rate centers that cover either the business or residence of end-users. (emphasis added)

These authorities expressly recognize that CMRS carriers have a right to and need for 7-digit local numbers and **retail rated** local calling to those numbers from other numbers that are rate centered in the same mandatory local calling area. Without regard to the physical location of the called party.

⁹ It is also incorrect as to ISPs. This Commission has referred to the fact that the calling and called NXXs are the determinant for **retail rating** of calls to ISPs. In ¶ 17 of the Memorandum Opinion and Order in *Starpower Communications v. Verizon South, Inc.*, File No. EB-00-MD-19, FCC 03-278 (Nov.

local numbers – in order to secure local rating for land to mobile calls – for many years, and it has never been the case that an LEC can impose toll to call a “local” mobile number, based on the commission of the sin of moving about by the mobile customer. This is mobile service. The FCC has consistently recognized that mobile service is mobile and is not a sin punishable by a toll on the wireline calling party.¹⁰

ASAP must once again point out the inconsistency in CenturyTel’s position. CenturyTel insists the proper focus is on the physical location of the called party for purposes of retail rating – and then it looks to a different location (ASAP’s switch) for the user’s location that is completely without any logical basis other than it is one of several possible intermediate points in the communication. We can all say with great confidence that not a single ASAP customer has set up residence inside the guts of ASAP’s class 5 switch in Austin or will ever be there. ASAP’s customers have Kyle, Fentress, Lockhart or San Marcos billing addresses for the most part. And that is where they “are” most of the time, to the extent it makes any difference. The call merely traverses the Austin switch and then goes on to its destination.¹¹ These are not calls “to Austin” no matter how many times CenturyTel recites that silly mantra.¹² The surrogate is

7, 2003) (“*Starpower Liability Order*”) the Commission noted that “at all relevant times, industry practice among local exchange carriers similarly appears to have been that calls are designated as either local or toll by comparing the NPA-NXX codes of the calling and called parties.” This was recently reaffirmed in the FCC’s refusal to vacate the *Starpower Liability Order* in the Order (FCC 04-102) adopted on April 21, 2004 in the same case. *See also, In the Matter of Number Portability*, CC Docket 95-116, Comments of BellSouth, p. 7; Centennial, p. 1; SBC, p. 4, Verizon, p. 6 (Jan. 20, 2004); HOM Tr. p. 198-199.

¹⁰ *FCC Number Portability Response Brief* pp. 16, 26, 27, 28.

¹¹ CenturyTel ignores that ASAP is providing a termination function, from its switch to the called party. It wants to stop at the switch.

¹² CenturyTel may be telling this Commission that the calls go “to Austin.” But the toll bills to its customers for calls to ASAP’s Lockhart numbers unequivocally state they go to Lockhart, which is in the same local calling area as San Marcos. *See* Attachment 1 (Excerpt from ASAP Hearing Exhibit 9), last 2 pages. Such duplicity should not be rewarded.

irrational, arbitrary and unnecessary since the “find the user” exercise is itself not relevant to retail rating. The FCC has always relied on the rate center designation to establish retail rating.¹³

CenturyTel is not forthright enough to acknowledge that it and TPUC “deemed” the calls to go “to Austin” rather than where they really go merely because ASAP’s service is wireless and the called party cannot be reliably located with reference to a wireline rate center at the time of an individual call. TPUC “deemed” the customer to reside within ASAP’s Austin switch. Interestingly, CenturyTel witnesses testified that the location of a switch is not determinative for call rating. Besides, notwithstanding TPUC’s finding and CenturyTel’s assertion to this Commission that the calls go “to Austin” CenturyTel’s billed its customers toll for calls to “Lockhart” and not to “Austin.”¹⁴

The physical location of a called CMRS customer has never affected retail rating to the calling party; under federal numbering rules, wireless carriers are not required to associate a customer with any particular rate center in order to obtain local calling. If CenturyTel can impose toll on calls to ASAP’s numbers then it will effectively eliminate all usefulness of them. A carrier gets NXXs in a rate center for the sole purpose of determining retail rating.¹⁵ Federal law clearly grants ASAP the right to use Type 2A interconnection and clearly grants ASAP the right to obtain local numbers – in order to arrange for local calling – in the areas where it holds a federal license to provide CMRS service.

The Commission has always recognized that competitive carriers in general and CMRS operators in particular need local numbers so that the persons who call competitive carriers’ customers (wherever they may be at any given time) will not incur toll charges. This is so despite

¹³ *FCC Number Portability Response Brief* pp. 6, 7, 9, 10, 11, 12, 20, 25, 26, 27, 28, 29.

¹⁴ *See* Int. Hng. Tr. 194, line 16 – 195, line 19 (location of switch not determinative); HOM Tr. p. 676, line 20 – 677, line 20, Exhibit 4 to ASAP Exhibit 9 (Gaetjen Dir.) (CenturyTel bill showing call to ASAP Lockhart NXX as going to “Lockhart”).

the fact that it has always been self evident that a CMRS operator will never know the precise physical location (in relation to a local calling area boundary) of its customer, the called party, at the time of the call. Still, paging companies are entitled to local numbering resources in order to provide for local retail rating.¹⁶

“(W)ireless carriers have considerable discretion in how they assign telephone numbers across the rate centers in their operating areas.”¹⁷ It is therefore clear that wireless carriers have no obligation to assign numbers based on a customer’s physical location with reference to an ILEC’s rate center. Instead, the preferences of its customers and cost considerations govern. TPUC and CenturyTel want to remove the “considerable discretion” given to CMRS to maximize customer welfare and employ efficient architectures by eliminating the ability to provide for locally rated inbound calls.

CenturyTel asserts it has “offered alternatives to ASAP, to which ASAP has not responded.”¹⁸ This is simply untrue. CenturyTel’s “alternatives” were wholly dissected during the case at TPUC. CenturyTel will not locally retail rate calls to ASAP’s numbers unless and until:

- *ASAP establishes a POI in San Marcos;
- *There is an interconnection or reverse billing agreement; and,
- *ASAP pays intrastate switched access to CenturyTel for all traffic.

In other words ASAP must: (1) allow CenturyTel to impose toll; (2) execute a reverse billing arrangement and pay for all traffic at 3.1¢ per minute; or (3) execute an interconnection agreement that requires ASAP to abandon its Type A interconnection and obtain a special access

¹⁵ *NANC Report to FCC, supra.*

¹⁶ *NRO NPRM, supra.*

¹⁷ *8th CMRS Report* at ¶ 62. Note 226 to that paragraph observes that CMRS providers “assign numbers so as to minimize the access charges paid to local wireline companies.” ASAP allows its customers to select the number that will allow family, employers, fellow employees or others to reach them without incurring a toll. Int. Hng. p. 199, line 14 – p. 200, line 2

facility to establish a POI in San Marcos and then pay intrastate switched access for all calls originated by CenturyTel. CenturyTel has never offered any means by which ASAP can end toll and not incur an excessive price per minute of use and pay for the transport associated with CenturyTel originated traffic. Each requires an agreement notwithstanding the fact the parties are already indirectly interconnected and under the prevailing authority no agreement is required. These are simply not reasonable or lawful choices.¹⁹

ASAP urges the Commission to consider the result of CenturyTel's action in the context of number portability. Assume that ASAP had ported in SBC Lockhart numbers (or Verizon Kyle or Fentress numbers) to serve its customers.²⁰ Before the port, calls from CenturyTel that originated in San Marcos and went to the Lockhart, Kyle or Fentress number would be retail rated as local. After the port, they must still be retail rated as local under the current rules, and this is so even though the CMRS carrier will not know the actual physical location of the called customer at the time of the call. This is so even if the CMRS carrier does somehow know that the customer is not physically present in the rate center. Under the rules, ported numbers retain their rate center designation.²¹ ILECs such as CenturyTel cannot toll rate unless the CMRS carrier establishes a point of interconnection in the rate center, pays the originating carrier switched access charges, executes an interconnection agreement and/or somehow proves the customer is

¹⁸ CenturyTel Ex Parte, p. 5.

¹⁹ Access charges are not due for intraMTA traffic. There is no obligation to directly interconnect. LECs must honor the rate center assignments of other carriers and cannot be forced to pay access charges in order to arrange for calling parties to not pay toll to numbers associated with the same local calling area.

²⁰ Even though ASAP is not presently required to port out numbers, as a wireless carrier it is still entitled to port in. The porting rule requires LECs to port numbers out to "any licensed CMRS provider." See 47 C.F.R. § 52.23(b)(2)(i). ASAP is a licensed CMRS provider and is therefore entitled to seek porting out.

²¹ Any state tariff that is interpreted to imposing toll on newly ported numbers that were local before the port would have to fall in the face of the federal rules. For this reason alone, CenturyTel's filed tariff argument must fail.

physically present in the rate center.²² It is therefore clear that CenturyTel could not impose toll if these numbers were ported. The FCC has also indicated that ported numbers should be treated in the same way as if the CMRS carrier had used one of its own numbers. Hence, CenturyTel cannot impose toll for calls to ASAP's own numbers any more than it can for calls to ported numbers.

B. CENTURYTEL CONTINUES TO CONFUSE RETAIL RATING AND CARRIER COMPENSATION, AND MISCONSTRUES THE COMPENSATION RULES IN ANY EVENT.

CenturyTel reaches outside the record developed at TPUC and contradicts the TPUC's findings of fact by brining in unsubstantiated hearsay to imply that it bears some potential cost responsibility for the transport outside its exchange boundary of the traffic it originates. CenturyTel claims someone at SBC indicated it may someday force CenturyTel to bear the cost of transport from San Marcos to the Austin tandem. The record in the case at TPUC shows this is not true. Indeed, the TPUC order CenturyTel defends expressly addressed this issue, and held in Finding of Fact Nos. 48-50 that CenturyTel is not being charged:

48. When a CenturyTel customer located in San Marcos dials an NXX that ASAP has associated with Kyle, Lockhart, or Fentress, the only means for this number to reach ASAP's Austin switch is via a trunk between CenturyTel's San Marcos tandem switch and SWBT's Austin Greenwood tandem switch. CenturyTel and SWBT have designated this trunk as a "toll trunk."
49. SWBT and CenturyTel have established a "meet point" at the SWBT-owned "hut" on Wonder World Drive in San Marcos.
50. CenturyTel is not being charged for use of the trunk between CenturyTel's San Marcos tandem switch and SWBT's Austin Greenwood tandem switch.

TPUC expressly found that CenturyTel is not being charged for use of any trunks that carry calls to ASAP's Kyle, Fentress or Lockhart NXXs. CenturyTel presented absolutely no

²² *Wireline-Wireless Porting Order* ¶¶ 11, 16, 28. The Commission analogized porting in a number to the carrier assigning a new number associated with the same rate center – which is what ASAP did here. The bottom line is that CenturyTel simply cannot do what it has done under federal law.

evidence that it was. CenturyTel witness Smith testified that she was not aware of any charges.²³

In fact, she testified that CenturyTel and SWBT bore their own costs for the facilities up to the meet-point, and used bill and keep for ELCS traffic.²⁴

ASAP has made arrangements with SWBT to provide this transit service.²⁵ ASAP clearly demonstrated that it has informally agreed to waive recovery of reciprocal compensation from SBC in return for transit from other carriers. SBC sends the calls; ASAP terminates them. ASAP does not bill SBC reciprocal compensation for intraMTA calls. ASAP is not paying SBC for any transport related to transit traffic.

CenturyTel has misconstrued the rules on who bears transport cost responsibility in any event. We are discussing traffic originated by CenturyTel and terminated by ASAP. Under prevailing FCC rules relating to wholesale carrier compensation, the originating carrier is responsible for the cost of transport to the point of interconnection.²⁶

C. THIS IS NOT A MATTER RESERVED TO THE STATES, AND THE FILED TARIFF DOCTRINE IS NO BAR.

CenturyTel claims that this is a matter reserved to the state commission, by asserting that the “state has the right to designate which calls are local.” CenturyTel *Ex Parte* page 3. The state’s powers are not as broad as CenturyTel claims. For example, the state could not rule that

²³ Hng. Tr. pp. 416-7.

²⁴ Hng. Tr. pp. 304-5, 324, 439-44, 453. The arrangement is bill and keep, so CenturyTel’s ELCS costs are recovered from its end users. Hng. Tr. 324, 461. ASAP simply cannot understand why the cost recovery should be different when one of its end users calls a competitive carrier rather than another ILEC.

²⁵ As explained by ASAP witnesses Goldstein and Gaetjen, ASAP’s informal arrangement with SWBT is that ASAP will not charge SWBT for transport and termination of calls that originate on SWBT’s network, even though ASAP is entitled to do so under the FCC’s rules. In return, SWBT provides transit to ASAP for calls that originate on other carriers’ networks without charge. Hng. Tr. pp. 38, 111, 163, 201, 259-61, 277-8, 279-82, 812, 854, 877. This form of barter is perfectly reasonable and lawful.

²⁶ See 47 C.F.R. §§ 51.703(b), 51.709(b); *FCC Number Portability Response Brief*, pp. 31-37. Recall that CenturyTel is the originating carrier and SBC is providing transit. SBC is not cost responsible

calls between two NXXs are local to each other if they involve only CenturyTel customers, but if one of the parties is a competitive carrier's customer then the call is toll regardless of rate center designation. A state could not impose toll on a call from a wireline customer to a formerly wireline number that has been ported to a wireless carrier by interpreting an ILEC's state tariff to require it. Obviously, this would be unreasonably discriminatory under federal law. It would violate the dialing parity rules and the Commission's porting rules. Such an action would be properly the subject of preemption. That is exactly what has happened here: TPUC ruled that CenturyTel can impose toll on its own customers when they call the customer of another carrier that has a switch outside of CenturyTel's area, and the called customers are not demonstrably in the local calling area. This flatly violates federal law, and must be preempted.

CenturyTel also overstates the states' power. The states can define rate centers and local calling areas.²⁷ But once a state establishes the rate center and local calling area boundaries, it cannot discriminate between carriers' rate center assignments, since that would clearly impinge on the FCC's authority over numbering. It is the numbers – or more precisely the rate center association of the number – that absolutely drives retail rating. The FCC clearly knows and understands this.²⁸ Sadly, CenturyTel refuses to recognize the plain fact that it is a renegade – the

for the transport between its meet point with CenturyTel and the tandem. CenturyTel is the cost-responsible party. Nonetheless, CenturyTel is not bearing any such cost.

²⁷ See, e.g., *Portability First Report* ¶ 186.

²⁸ *Wireline-Wireless Portability Order, supra*; Eighth Report, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 02-379, FCC 03-150, ¶ 62 [“First, the defining aspect of mobile telephony is, of course, mobility... Second, wireless carriers have considerable discretion in how they assign telephone numbers across the rate centers in their operating areas. In other words, a mobile telephone subscriber can be assigned a phone number associated with a rate center that is a significant distance away from the subscriber's place of residence”] and n. 227 [“Once the NPA-NXX (i.e., 212-449) is assigned to the wireless carrier, the carrier may select any one of its NPA-NXXs when allocating that number to a particular subscriber. Therefore, with regard to wireless, the subscriber's physical location is not necessarily a requirement in determining the phone number assignment – which is very different from how wireline numbers are assigned.”]

only ILEC in Texas that has ever refused to honor ASAP's rate center assignments.²⁹ Every other LEC uses NXXs for *retail rating*, by looking at the LERG and BIRDDS database – which are, of course NXX/rate center assignment driven. The states certainly can establish the rate center, but they clearly cannot unreasonably discriminate between calls between NXXs associated with the rate centers in a local calling area, or violate a carrier's federal numbering rights.

The FCC has exclusive authority over numbering issues, including determining how they are to be issued and what issuance of them means. The Commission has the authority, indeed the duty, to take action with regard to rate center issues, since they affect the efficient administration of numbering resources.³⁰ CenturyTel's state-sanctioned refusal to recognize the rate center designation of ASAP's NXXs, by imposing toll to its users when they call ASAP's numbers directly violates ASAP's federal numbering rights and violate the local dialing parity rule³¹ since CenturyTel is requiring its users to dial additional digits to reach ASAP's customers. As the FCC has clearly and consistently recognized, the rate center designation is made for the purpose of accomplishing the desired retail rating for inbound calls – to “enable the rating of incoming wireline calls as local, wireless carriers typically associate NXXs with wireline rate centers that cover either the business or residence of end-users.”³² These are local calls and CenturyTel must allow its customers to make them without having to dial 1+ and pay toll. CenturyTel has directly frustrated the entire purpose of getting an NXX or thousands block and assigning it to a specific rate center. This cannot be allowed under the federal rules. Insisting that a mobile customer must be physically within a rate center in order to be reachable by callers in the same local calling area

²⁹ SBC, for example, recently informed TPUC in another matter that a competitive carrier's rate center designation controls retail rating by the calling party's LEC, even if the customer is not physically present in the rate center. *See* Attachment 2 (excerpt of SBC filing in TPUC Docket 24015).

³⁰ *See, e.g.,* First Report and Order and FNPRM, *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, RM 8535, FCC 96-286 ¶ 63, note 174 (Jul. 2, 1996) (“*Portability First Report*”).

³¹ 47 C.F.R. § 51.207.

on a “local” basis has no basis in law or the precedent. No state tariff can override these fundamental federal principles.³³

D. CENTURYTEL IS SETTING THE STAGE TO IMPOSE TOLL ON ANY CALL TO ANY COMPETITOR.

This case is not just about ASAP. CenturyTel is also trying to be in a position to impose toll on any carrier that does not have a switch in San Marcos. Cell, PCS, covered SMS and paging providers are all impacted. This is especially so with ported numbers. Wireline to Wireless and Wireline to Wireline Porting simply cannot work if the ILEC refuses to honor the rate center designation of the winning carrier. No carrier can truly identify with precision the exact location of their customer at the time a call is initiated, and sometimes even thereafter. CenturyTel will therefore be able to toll rate calls to any mobile customer, since – if our LERG information is correct, only one mobile provider has a switch in San Marcos.³⁴ The theory could be extended to other LECs as well. Most CLECs have a single switch that covers a large geographic area and several rate centers or local calling areas. Most have are will soon have a

³² *NRO NPRM*, *supra*.

³³ ASAP believes TPUC misinterpreted CenturyTel’s tariffs based on a plain reading of the terms in them. CenturyTel’s tariff terms are quite similar to those interpreted by the Commission in *Starpower*, where the FCC concluded the tariff did not at all require a physical presence in the local calling area. *Starpower Damages Order* ¶ 15. The relevant provisions in CenturyTel’s tariff are contained in Attachment 1 (excerpt of ASAP Exhibit 9 in the TPUC case) and they do not expressly address physical presence. ASAP has sought preemption because the tariff interpretation leads to a violation of federal law and eliminates important federal rights held by ASAP. Any filed tariff is no bar since it is preempted to the extent it violates federal law.

³⁴ Southwestern Bell Wireless holds 512-618 which apparently resides in CenturyTel’s switch (this is likely a form of Type 1 interconnection). Verizon Wireless holds 512-557 and 512-667. Sprint PCS holds 512-644 and 512-787. T-Mobile holds 512-665. Nextel has 512-738. F. Cary Fitch holds 512-889. Each of these other CMRS carriers have a switch or POI in Austin, but no switch and no publicly disclosed POI or POI CLLI in San Marcos. All calls to these “San Marcos” numbers will be toll under CenturyTel’s theory. CenturyTel’s theory would allow it to change the retail rating of a call from a San Marcos wireline customer to a former San Marcos wireline customer of CenturyTel that ports a number to Verizon Wireless or Sprint PCS.

single point of interconnection in the LATA.³⁵ One can certainly imagine CenturyTel insisting that every CLEC and every CMRS carrier be subject to the same new rule in the name of nondiscrimination. After all, none can truly guarantee that their customer is physically located in the local calling area at the time of any given call.³⁶

CONCLUSION

CenturyTel's *Ex Parte* adds nothing to the issues, since it merely repeats claims already made in the Comments and every point it makes has already been addressed by the FCC and resolved against CenturyTel's ultimate position. CenturyTel simply will not follow the rules or industry practice. It cannot be allowed to override ASAP's numbering rights and ASAP's ability to provide for local rating of inbound calls to numbers associated with the same local calling area as the calling number. ASAP's Petition must be granted.

WHEREFORE, PREMISES CONSIDERED, ASAP PAGING INC. respectfully requests that the Commission grant ASAP's Petition for Preemption and: (1) preempt the October 9, 2003 order of the Public Utility Commission of Texas in TPUC Docket 25673 [Exhibit 1]; (2) preempt certain provisions of the Texas Public Utility Regulatory Act [Exhibit 2]; (3) preempt certain TPUC substantive rules [Exhibit 3]; (4) require the TPUC and CenturyTel of San Marcos, Inc. ("CenturyTel") to honor federal law as it pertains to **retail rated** local calling to CMRS users with numbers that are "local" to the landline user; and (5) preempting

³⁵ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, 17 F.C.C. Rcd 27039 ¶ 307 (2002) [summarizing evidence that fiber-intensive CLEC network architectures allow a single switch to access much larger geographic area]; *Portability First Report* ¶ 186, note 539.

³⁶ LECs provide Foreign Exchange and or FX-like services. Calls can be forwarded. The called party can be using an IP-based phone, which is presence-based and not location-based. CMRS service is – well – mobile. There is simply no way to guarantee physical presence. Hence CenturyTel will logically choose to "deem" the called party to be occupying a few square microns (1 micron is 1-millionth of a meter, or 1/25,000 of an inch) in the competing carrier's switch.

TPUC's attempt to require that ASAP submit to state regulation for an exclusively interstate service over which TPUC has no jurisdiction.

Respectfully Submitted,

ASAP PAGING, INC.

W. Scott McCollough
Texas State Bar No. 13434100
1250 Capital of Texas Highway South
Building Two, Suite 235
Austin, Texas 78746
713.231.2315³⁷
512.692.2522 FAX³⁸

e-mail: wsmc@smccollough.com

By: _____
W. Scott McCollough

³⁷ This is a Houston rate centered number held by UTEX Communications Corporation, and calls to and from it are converted to IP and delivered over the Internet to a terminal device used by counsel wherever counsel may be at the time, including Austin Texas where this filing was drafted. Calls to and from users in the Houston rate center are retail rated local. Calls from other rate centers, including Austin, are retail rated as toll. This is all independent of the actual physical location of counsel at the time the call is received as it must be since neither the originating nor the terminating carrier (each of which is wireline) can ever know where counsel is when the communication is received.

³⁸ This is an Austin rate centered number held by XO. FAXes sent to it go to a switch somewhere and are then directed to a server somewhere at which point it is converted to an e-mail and delivered wherever counsel may have access to his email. FAXes from the Austin rate center are retail rated as local. FAXes from other rate centers are retail rated as toll. This is all independent of the actual physical location of counsel at the time the email containing the FAX is downloaded from a mail server to some computer as it must be since neither the originating nor the terminating carrier (each of which is wireline) can ever know where counsel is when the communication is received.

Attachment 1
Excerpt from ASAP Exhibit 9
CenturyTel Tariff
CenturyTel Bill to Users



Control Number: 25673



Item Number: 64

Addendum StartPage: 0

SOAH DOCKET NO. 473-02-2503
PUC DOCKET NO. 25673

02 JUL 10 PM 3:07
BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

COMPLAINT, REQUEST FOR
EXPEDITED RULING, REQUEST
FOR INTERIM RULING, AND
REQUEST FOR EMERGENCY ACTION
OF ASAP, INC.
AGAINST CENTURYTEL OF
SAN MARCOS, INC.

PRE-FILED DIRECT TESTIMONY OF TED GAETJEN

INTRODUCTION AND BACKGROUND

Q: PLEASE STATE YOUR NAME, TITLE AND EMPLOYER.

A: My name is Ted Gaetjen. I am President of ASAP Paging, Inc. ("ASAP"), the Complainant in this case.

Q: PLEASE DESCRIBE ASAP.

A: ASAP is a Commercial Mobile Radio Service ("CMRS") carrier. We are authorized by the FCC to provide "interconnected" one-way CMRS services, typically called "paging." We have been assigned spectrum with associated authorized service areas in several parts of Texas, and in particular the Austin LATA. We provide retail paging services directly to users, and we also provide bulk paging services to entities such as large companies or public organizations who assign them to employees for their use. In addition we provide bulk paging service to resellers, who in turn market service directly to users. While some of the resellers are themselves CMRS providers in some markets, many of the resellers are not CMRS licensees. We obtain the license, construct the network and obtain the interconnection; they market and sell at retail. I note that the regulations for CMRS providers are different than for LECs. Neither CMRS providers nor resellers are regulated at the state level. Resellers do not require FCC licensure; only the facilities-based carriers are licensed. On the interconnection side, while some of the rules are the same for CMRS and CLECs (for example CMRS interconnection is covered by part 51 of the FCC's rules, which also apply to CLECs), there are additional regulations for CMRS interconnection in parts 20 and 22 of the FCC rules.

EXHIBIT 3

C. ERAL CUSTOMER SERVICES TARIFF

CENTURY TELEPHONE OF SAN MARCOS, INC.

Section 1
2nd Revised Sheet No. 9
Cancels 1st Revised Sheet No. 9

GLOSSARY

ENTRANCE FACILITIES

Facility extending from the point entrance on private property to the premises on which service is furnished.

EXCHANGE

A unit established by the Company for the administration of telecommunications service in a specified area for which a separate local rate schedule is provided. The area usually embraces a city, town, or village its environs. It consists of one or more central offices, together with associated plant facilities used in furnishing telecommunications services in that area.

EXCHANGE ACCESS LINES

See " Access Line."

EXCHANGE AREA

The area within which the Company furnishes complete telephone service from one specific exchange at the exchange rates applicable within that area.

EXCHANGE LINE

Any circuit connecting an exchange access line with a central office.

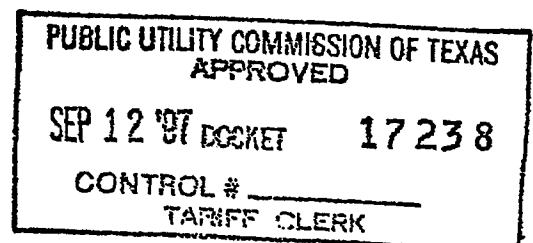
EXCHANGE SERVICE

Exchange service is a general term describing as a whole the facilities for local intercommunications, together with the capability to send and receive a specified or an unlimited number of local messages at charges in accordance with the provisions of the Local Exchange Tariff.

- (a) Flat Rate Service: A classification of exchange service furnished a customer under tariff provisions, for which a stipulated charge is made, regardless of the amount of use.

(D)

(D)



Issued: _____
Effective: April 15, 1997
Order No.: _____

Issued By: G. Clay Bailey
Director, Regulatory Affairs
P.O. Box 4065, Monroe Louisiana 71211

GENERAL CUSTOMER SERVICES TARIFF

CENTURY TELEPHONE OF SAN MARCOS, INC.

Section 1
2nd Revised Sheet No. 10
Cancels 1st Revised Sheet No. 10

GLOSSARY

(D)

EXTENDED AREA SERVICE

A type of telephone service furnished under tariff provisions where by customers of a given exchange may complete calls to and/or may receive calls from one or more exchanges without the application of long distance message telecommunications charges.

FACILITIES

All the plant and equipment of the Company and all instrumentalities owned, licensed, used, controlled, furnished, or supplied for or by the Company, including any construction work in progress allowed by the Public Utility Commission of Texas.

FAMILY

A group of two or more persons related by blood, marriage or adoption and residing together. A primary family consists of the head of a household and all (one or more) other persons in the household related to the head. A secondary family comprises two or more persons such as guests, lodgers, or resident employees and their relatives, living in a household or quasi-household (other than the negligible number of such groups among inmates or institutions) and related to each other.

FLAT RATE SERVICE

A classification of exchange service furnished a customer under tariff provisions for which a stipulated charge is made regardless of the amount of use.

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED

SEP 12 '97 DOCKET 17 23 8

CONTROL # _____
TARIFF CLERK

Issued: _____
Effective: April 15, 1997
Order No.: _____

Issued By: G. Clay Bailey
Director, Regulatory Affairs
P.O. Box 4065. Monroe Louisiana 71211

GENERAL CUSTOMER SERVICES TARIFF

SAN MARGOS TELEPHONE COMPANY, INC.

Section 1
Revised Sheet 14
Revision No. 1

GLOSSARY

INTERFACE

- (a) The junction or point of interconnection between two systems or equipments having different characteristics which may differ with respect to voltage, frequency, speed of operation, type of signal and/or type of information coding including the connection of other than Company-provided facilities to exchange facilities provided by the Company.
- (b) The point of interconnection between Company equipment and communications facilities on the premises of the Customer. Also referred to as Demarcation Point.

INTERFACE EQUIPMENT

Equipment provided by the Company at the interface location to accomplish the direct connection of facilities provided by the Company with facilities provided by other than the Company.

INTERLATA

Long Distance Message Telecommunications Service where point locations are in a different Local Access and Transport Area (LATA).

INTRALATA

Long Distance Message Telecommunications Service where service point locations are within the same Local Access and Transport Area (LATA).

INTRAEXCHANGE CHANNEL SERVICE

Channel connecting two or more "Primary Terminations" in the same exchange.

INTRAEXCHANGE SERVICE

Telecommunications service confined wholly within a single exchange.

James J. Pendergast, Jr.
President

Effective: December 31, 1987

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED

FEB 5 '88 DOCKET

CONTROL # 7739
TARIFF CLERK

GENERAL CUSTOMER SERVICES TARIFF

SAN MARCOS TELEPHONE COMPANY, INC.

Section 1
Revised Sheet 15
Revision No. 2

GLOSSARY

JACK

A modular outlet designed to permit the establishment of a connection between the local exchange facilities and terminal equipment with cords ending in plugs.

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LABELING

Registered terminal equipment and/or registered protective circuitry shall have prominently displayed on an outside surface information providing the registration number, the ringer equivalence number, the grantee's names, model number and serial number or date of manufacture.

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LINE

See "Access Line."

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LOCAL ACCESS AND TRANSPORT AREA (LATA)

Denotes a geographic area established for the administration of telecommunications service. It encompasses designated local operating Telephone Company exchanges which are grouped to serve common social, economic, and miscellaneous purposes.

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LOCAL CALLING AREA

See "Local Service Area."

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LOCAL CHANNEL

Applies to that portion of a channel which connects a station to the interexchange channel or to a channel connecting two or more exchange access lines within an exchange area.

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LOCAL EXCHANGE SERVICE

Provides for telephone communication within local service areas in accordance with the provisions of the General Customer Services Tariff, including the use of exchange facilities required to establish connection between exchange access line.

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James J. Pendergast, Jr.
President

Effective: December 31, 1987

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED

FEB " 5 '88 DOCKET

CONTROL # 7739
TARIFF CLERK

GENERAL CUSTOMER SERVICES TARIFF

SAN MARCOS TELEPHONE COMPANY, INC.

Section 1
Revised Sheet 16
Revision No. 2

GLOSSARY

LOCAL MESSAGE

A communication between two exchange access lines within the local service area of the calling telephone.

LOCAL MESSAGE CHARGE

The charge that applies for a completed message that is made when the calling exchange access line and the called exchange access line are both within the same local calling area where a local message charge is applicable.

LOCAL SERVICE

The intercommunication (by means of facilities connected with the Company central office or offices and under the provisions of the Company) between exchange access lines located in the same exchange or in different exchanges between which no toll rates apply.

LOCAL SERVICE AREA (LOCAL CALLING AREA)

The area within which telephone service is furnished customers under a specific schedule of exchange rates (flat or measured) and without toll charges. A local service area may include one or more exchange areas under extended area service arrangement.

LOCAL SERVICE CHARGE

The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local service area. This local service calling area may include one or more exchange areas.

LONG DISTANCE MESSAGE TELECOMMUNICATIONS SERVICE

Facilities furnished by means of wire, radio or a combination thereof for telecommunications between access lines in different local service areas in accordance with the regulations and system of charges specified by the Company. The toll service charges specified are in payment for all service furnished between the calling and called access lines.

James J. Pendergast, Jr.
President

Effective: December 31, 1987

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED

FEB 5 '88 DOCKET

CONTROL # 7799
TARIFF CLERK

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GENERAL CUSTOMER SERVICES TARIFF

SAN MARGOS TELEPHONE COMPANY, INC.

Section 1
Revised Sheet 27
Revision No. 2

GLOSSARY

TERMINATION OF SERVICE

The discontinuance of service or facilities provided by the Company, either at the request of the customer or by the Company under its regulations concerning cancellation for cause.

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TIE LINE

A circuit connecting two switching systems (PBX and/or Automatic Call Distribution Systems) for the purpose of intercommunicating between the stations connected.

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TOLL MESSAGE

A communication between two exchange access lines, the called access line being outside of the local or service area of the access line from which the message originates.

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TOLL RATE

The initial period charge prescribed for a toll message usually based upon a minimum initial period and distance between exchanges.

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TOLL SERVICE

That part of the total telephone service rendered by the Company which is furnished between different local service areas in accordance with the rates and regulations specified in the Long Distance Message Telecommunications Tariff as may be issued or concurred in by the Company.

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TOUCH-PHONE SERVICE

A classification of exchange service furnished from the central offices, whereby calls are originated through the use of push-button tone pad instruments in lieu of a rotary dial instrument.

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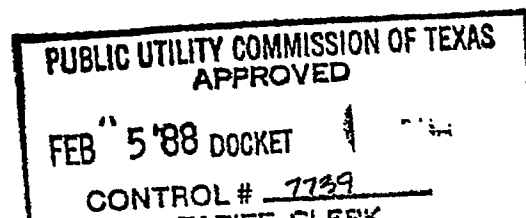
TRANSIENT MOBILE UNITS

A mobile unit communicating through a foreign base station.

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James J. Pendergast, Jr.
President

Effective: December 31, 1987



ATTACHMENT A

GENERAL EXCHANGE TARIFF

(T)

CenturyTel of San Marcos, Inc. d/b/a CenturyTel

Section 3 (T)
6th Revised Sheet No. 2
Cancels 5th Revised Sheet No. 2

BASIC LOCAL EXCHANGE SERVICE

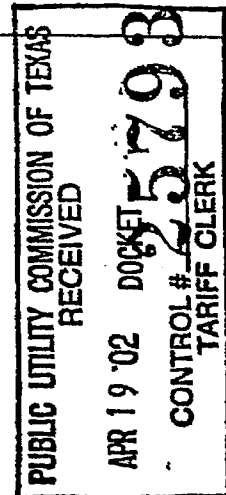
3.2 MONTHLY LOCAL EXCHANGE SERVICE RATES

3.2.1 Local Flat Rate Component

The following schedule of rates entitles customers to an unlimited number of local calls within the local calling area as indicated in Section 3.1.1 of this tariff. *

ACCESS LINE

CLASS OF SERVICE	RATE
<u>BUSINESS SERVICE</u>	
INDIVIDUAL	\$12.50
KEY/HUNTING	\$13.10
PBX	\$19.70
<u>RESIDENCE SERVICE</u>	
INDIVIDUAL	\$ 5.70
KEY/HUNTING	\$ 6.30



* Rates for Local Exchange Service do not include a charge for an instrument or other Customer Premises Equipment.

(1) Promotion:

Non-recurring charges will be waived for residential and single-line business customers who install an additional line at the same premises during the promotional period from May 1, 2002 through May 31, 2002.

(N)
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(N)

Issue Date: _____
Effective Date: May 1, 2002
Order Number: _____

Issued By: Jeffrey Glover
Vice President, External Relations
P.O. Box 4065, Monroe, Louisiana 71211

LOCAL EXCHANGE TARIFF

CenturyTel of San Marcos, Inc. d/b/a CenturyTel

Section 3
3rd Revised Sheet No. 2.a
Cancels 2nd Revised Sheet No. 2.a

BASIC LOCAL EXCHANGE SERVICE

3.2 MONTHLY LOCAL EXCHANGE SERVICE RATES (Continued)

3.2.1.a Expanded Toll-Free Local Calling Service (Continued)

B. ELCS is a non-optional service subject to the rate specified below. This monthly rate additive is assessed on a per access line basis to all customers in the San Marcos Exchange and is intended to recover the lost toll and added expenses of implementing ELCS, per Substantive Rule §23.49(c). The rate is in addition to the basic local exchange rate as specified in this tariff. This rate will apply as of the date of implementation ordered by the Commission and until CenturyTel of San Marcos, Inc.'s next general rate case.

C. The following exchanges are within the San Marcos ELCS calling scope:

Kyle, Texas
Fentress, Texas
Lockhart, Texas
Lytton Springs, Texas
Dale, Texas

Monthly Rate

Expanded Toll-Free Local Calling Service (ELCS)
(per access line)

\$ 0.39

(D)

PUBLIC UTILITY COMMISSION OF TEXAS	
APPROVED	
MAR 19 '02	DOCKET 2 4 4 6 3
CONTROL # _____	

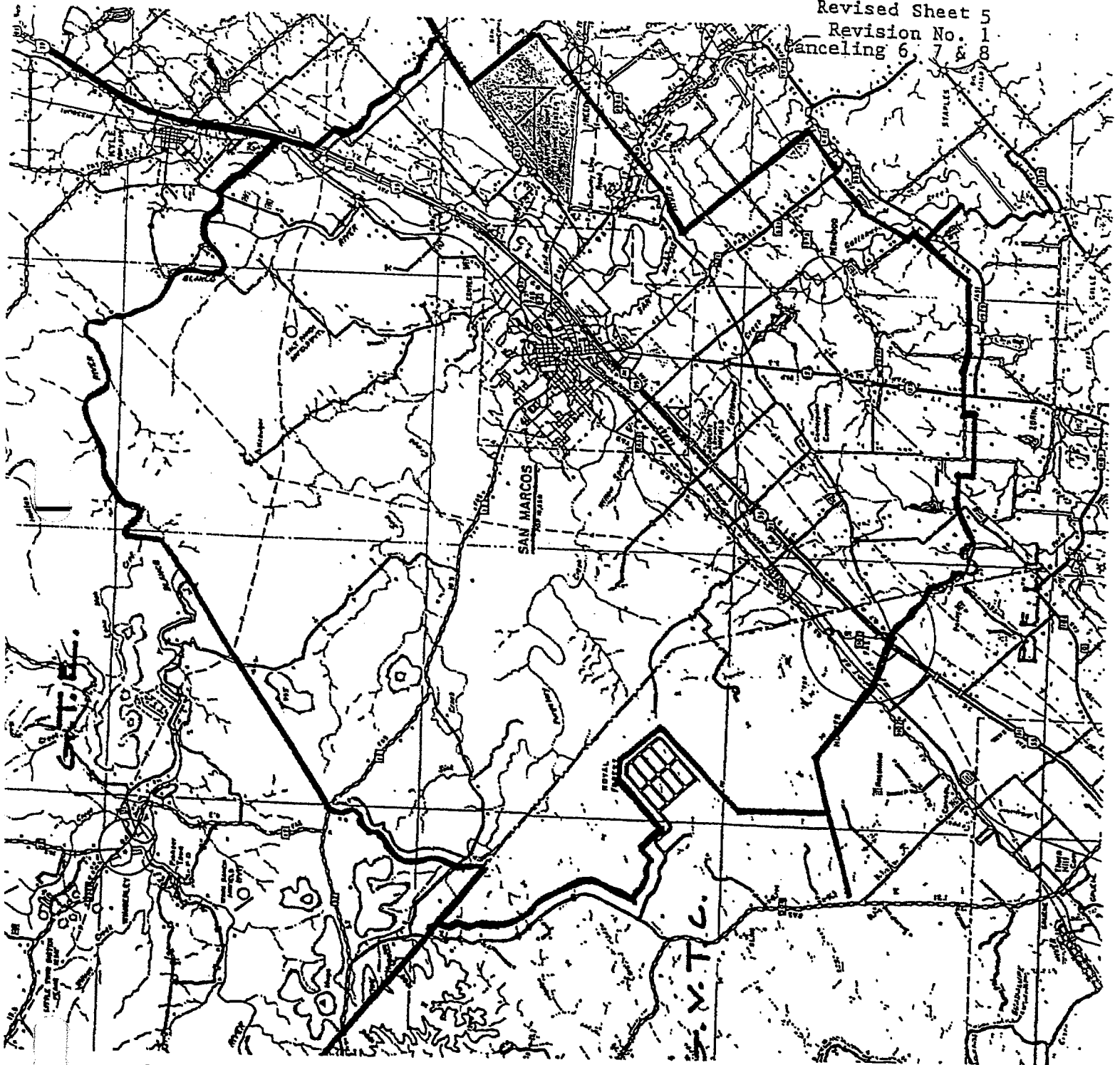
(D)

Issue Date: _____
Effective Date: September 1, 2001
Docket No.: _____

Issued By: John Jones
Vice President, Government Relations
PO Box 4065, Monroe, Louisiana 71211

GENERAL CUSTOMER SERVICES TARIFF
SAN MARCOS TELEPHONE COMPANY, INC.

Section 3
Revised Sheet 5
Revision No. 1
Canceling 6, 7 & 8



James J. Pendergast, Jr.
President

Effective: December 31, 1987

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED

FEB 5 '88 DOCKET

CONTROL # 7134

GENERAL CUSTOMER SERVICES TARIFF

SAN MARCOS TELEPHONE COMPANY, INC.

Section 12
Revised Sheet 1
Revision No. 3

INTEREXCHANGE SERVICES

12.1 LONG DISTANCE MESSAGE TELECOMMUNICATIONS SERVICE (LDMTS)

SAN MARCOS TELEPHONE COMPANY, INC., concurs in the Long Distance Message Telecommunications Service Tariff for IntraLATA Toll Service filed by Southwestern Bell for the Local Exchange Carriers of Texas. This concurrence includes the rates, charges, rules and regulations governing the IntraLATA Toll Service, including all amendments, revisions or successive issues thereof. SAN MARCOS TELEPHONE COMPANY, INC., makes itself a party to such rates, charges, rules and regulations until this concurrence is revoked or cancelled by either company. Subject to the jurisdiction of the Public Utility Commission of Texas, SAN MARCOS TELEPHONE COMPANY, INC., expressly reserves the right to cancel this statement of concurrence when it appears that such cancellation is appropriate.

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12.2 WIDE AREA TELECOMMUNICATIONS SERVICE

SAN MARCOS TELEPHONE COMPANY, INC., concurs in the Wide Area Telecommunications Service Tariff for IntraLATA WATS filed by Southwestern Bell for the Local Exchange Carriers of Texas. This concurrence includes the rates, charges, rules and regulations governing the IntraLATA WATS Service, including all amendments, revisions or successive issues thereof. SAN MARCOS TELEPHONE COMPANY, INC., makes itself a party to such rates, charges, rules and regulations until this concurrence is revoked or cancelled by either company. Subject to the jurisdiction of the Public Utility Commission of Texas, SAN MARCOS TELEPHONE COMPANY, INC., expressly reserves the right to cancel this statement of concurrence when it appears that such cancellation is appropriate.

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PUBLIC UTILITY COMMISSION OF TEXAS APPROVED JUL 23 '91 DOCKET 10002 CONTROL # _____ TARIFF CLERK
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President - Texas Division
Southwestern Bell Telephone Company
Dallas, Texas
Issued:
Effective:

LONG DISTANCE MESSAGE ELECOMMUNICATIONS
SERVICE TARIFF
Section: 1
Sheet: 12
Revision: Original
Replacing:

REGULATIONS

15. Application of Construction Charges

When special construction for individual customers is necessary, special construction charges may apply as set forth in Section 9 of the General Exchange Tariff.

16. Time and Charges

Time and charges on long distance messages may be quoted upon request from the customer. Name association with time and charge details will be provided where facilities permit. SWBT reserves the right to determine the facility used where there are multiple facilities.

17. Connections of Terminal Equipment and Communications Systems

17.1 General Provisions

Terminal equipment and communications systems may be connected at the customer's premises to LDMTS furnished by SWBT where such connections are made in accordance with the provisions of Section 8 of the General Exchange Tariff.

18. Method of Applying Rates

18.1 LDMTS rates between points (cities, towns or localities) are based on the air line distance between rate centers. In general, each point is designated as a rate center; certain small towns or localities are adjacent rate centers with which they are closely associated for communication purposes or by community of interest.

18.2 For the purpose of determining air line mileages, vertical and horizontal grid lines have been established across the United States and Canada. The spacing between adjacent vertical grid lines and between horizontal grid lines represents a distance of one coordinate unit. This unit is the square root of 0.1, expressed in statute miles. A vertical (V) and a horizontal (H) coordinate is computed for each rate center from its latitude and longitude location by use of appropriate map projection equations. A pair of V-H coordinates locates a rate center, for determining air line mileages, at a particular intersection of an established vertical grid line with an established horizontal grid line. The distance between any two rate centers is the air line mileage computed as explained in 18.3, following, with fractional miles being considered full miles.

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED

MAR 04 '92 DOCKET

CONTROL # 10908

President - Texas Division
Southwestern Bell Telephone Company
Dallas, Texas
Issued:
Effective:

LONG DISTANCE MESSAGE RECOMMUNICATIONS
SERVICE TARIFF
Section: 1
Sheet: 13
Revision: Original
Replacing:

REGULATIONS

18. Method of Applying Rates (Cont'd)

18.3 Determination of Air Line Mileages

To determine the rate distance between any two rate centers proceed as follows:

- (A) Obtain the "V" and "H" coordinates for each rate center.
- (B) Obtain the difference between the "V" coordinates of the two rate centers. Obtain the difference between the "H" coordinates.

Note: The difference is always obtained by subtracting the smaller coordinate from the larger coordinate.

- (C) Divide each of the differences obtained in (B) by three, rounding each quotient to the nearer integer.
- (D) Square these two integers and add the two squares.

If the sum of the squares is greater than 1777, divide the integers obtained in (C) by three and repeat step (D). Repeat this process until the sum of the squares obtained in (D), is less than 1778.

- (E) The number of successive divisions by three in steps (C) and (D) determines the value of "N". Multiply the final sum of the two squares obtained in step (D) by the multiplier specified in the following table for this value of "N", preceding:

<u>N</u>	<u>Multiplier</u>	<u>Minimum Rate Mileage</u>
1	0.9	----
2	8.1	41
3	72.9	121
4	656.1	361
5	5,904.9	1,081
6	53,144.1	3,241

- (F) Obtain square root of product in (E) and, with any resulting fraction, round up to next higher integer. This is the message rate mileage except that when the mileage so obtained is less than the minimum rate mileage shown in (E), preceding, the minimum rate mileage corresponding to the "N" value is applicable.

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED

MAR 4 '92 DOCKET
CONTROL 10908

President - Texas Division
Southwestern Bell Telephone Company
Dallas, Texas
Issued:
Effective:

PRIVATE NE SERVICE TARIFF
ction: 4
Sheet: 2
Revision: Original
Replacing:

LOCAL ACCESS AND TRANSPORT AREAS

2. List of Local Access and Transport Areas (Cont'd)

2.2 AMARILLO LATA (556) (Cont'd)

ASSOCIATED LOCAL EXCHANGE COMPANY EXCHANGES (Cont'd)

Nazareth	Spearman	Turpin, Okla.
Oklahoma Lane	Stevens	Tyrone, Okla.
Panhandle	Stratford	Umbarger
Parmer	Summerfield	Vega
Perryton	Sunray	Wellington
Pleasant Hill	Texhoma, Okla.	Westway
Quitaque	Texline	Wheeler
Sanford	Tharp	White Deer
Silverton	Turkey	Wildorado
South Texhoma		

2.3 AUSTIN LATA (558)

ADAMSVILLE	LAMPASAS	ROCKDALE
AUSTIN	LIBERTY HILL	SMITHVILLE
BASTROP	LOCKHART	TAYLOR
ELGIN		

ASSOCIATED LOCAL EXCHANGE COMPANY EXCHANGES

Bertram	Georgetown	McDade
Briggs	Granger	Milano
Buchanan Dam	Hutto	Paige
Buda	Jarrel	Rocky Creek
Burnet	Kempner	San Gabriel
Coupland	Kyle	San Marcos
Dale	Lometa	Thorndale-Thrall
Dripping Springs	Lytton Spring	Wimberley
Fentress	Martindale	

2.4 BEAUMONT LATA (562)

BEAUMONT	KOUNTZE	SOUR LAKE
BRIDGE CITY	LaBelle	SOUTH VIDOR
BUNA	LUMBERTON	SPURGER
CHINA	MAURICEVILLE	VIDOR
DEWEYVILLE	NEDERLAND-PORT NECHES	WARREN
EVADALE	ORANGE	WESTBURY
FANNETT	PORT ARTHUR	WILDWOOD
JASPER	SABINE PASS	WOODVILLE
KIRBYVILLE	SILSBEE	

ASSOCIATED LOCAL EXCHANGE COMPANY EXCHANGES

Anahuac	Fairmount	Newton
Bon Wier	Hamshire	Nome
Bronson	Hankamer	Pineland
Burkeville	Hemphill	Smith Point
Colmesneil	High Island	Wallisville
Double Bayou	Milam	Winnie

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED

MAR 11 '92 DOCKET
CONTROL # 10928
TARIFF CLERK

EXHIBIT 4



PAGE 6 - CTE

ACCOUNT NUMBER

512-393-

BILLING DATE

05/25/02

ITEM	DATE	CALLED FROM	CALLED TO	TIME	TYPE	MINS	AMOUNT	
01	05-01	AUSTIN	TX			1	.20	
02	05-01	AUSTIN	TX			1	.80	
03	05-03	AUSTIN	TX			1	.20	
04	05-04	AUSTIN	TX			7	1.01	
05	05-11	AUSTIN	TX			2	.29	
ITEMIZED CHARGES FOR 512-393-						2.50		
06	05-09	LOCKHART	TX	512-384-	4:56PM	A	1	.10
ITEMIZED CHARGES FOR 512-393-						.10		
07	05-21	AUSTIN	TX	4:55PM	A	1	.20	
08	05-21	AUSTIN	TX	4:56PM	A	1	.20	
09	05-23	LOCKHART	TX	512-384-	12:31PM	A	1	.10
10	05-23	LOCKHART	TX	512-384-	12:31PM	A	1	.10
11	05-23	LOCKHART	TX	512-384-	12:32PM	A	1	.10
12	05-23	LOCKHART	TX	512-384-	12:33PM	A	1	.10
13	05-23	LOCKHART	TX	512-384-	12:34PM	A	1	.10
14	05-23	LOCKHART	TX	512-384-	12:34PM	A	1	.10
ITEMIZED CHARGES FOR 512-393-						1.00		
15	05-04	LOCKHART	TX	512-384-	10:10AM	A	1	.06
16	05-21	LOCKHART	TX	512-384-	1:45PM	A	1	.10
ITEMIZED CHARGES FOR 512-393-						.16		
17	04-30	LOCKHART	TX	512-384-	11:03AM	A	1	.10
18	05-07	LOCKHART	TX	512-384-	3:41PM	A	1	.10
ITEMIZED CHARGES FOR 512-393-						.20		
TOTAL OF ITEMIZED CALLS				28.0 MINUTES			3.96	
FEDERAL TAX						7.27		
STATE TAX						16.36		
TEXAS UNIVERSAL SERVICE						9.10		
COUNTY SALES TAX						1.31		
CITY SALES TAX						3.93		
9-1-1 AND POISON SURCHARGE						.02		
911 SERVICE SURCHARGE						5.50		
CITY FRANCHISE TAX						5.83		
TOTAL OF TAXES							49.32	
TOTAL CenturyTel							850.66	

TYPE:

A-DIRECT DIAL
T-TWIST NUMBERB-CALLING CARD
C-OPERATOR HANDLEDG-COLLECT
H-UNKNOWN TO GENERAL

2.05	MAY 08	2.05	
MISC CHGS/ADJS FOR 512-393-5409			9.15
EXPANDED LOCAL CALLING SERVICE		.39	
BRI SW DATA "B" CHAN-BUS		13.37	
TOTAL LOCAL EXCHANGE SERVICES			13.76
MONTHLY SERVICE AMOUNT FOR 512-393-			13.76
ADD CEN OFF LINE CHARGE-BUS			
3.60	MAY 08	3.60	
ADD LINE CONN CHARGES BUS			
3.50	MAY 08	3.50	
MISC CHGS/ADJS FOR 512-393-			7.10
EXPANDED LOCAL CALLING SERVICE		8.97	
FEDERAL UNIV SRV CHG PRI		1.85	
PRI ACCESS LINE		824.00	
TOTAL LOCAL EXCHANGE SERVICES			834.82
SUBSCRIBER LINE CHARGE - INTER			46.00
ISON LINE PORT PRI		23.51	
TOTAL OPTIONAL FEATURES/SERVICES			23.51
MONTHLY SERVICE AMOUNT FOR 512-393-			904.33
TOTAL MONTHLY SERVICE AMOUNT			965.09
TOTAL MISC CHGS/ADJS			107.58

Long Distance Detail

ITEM	DATE	CALLER FROM	CALLER TO	TIME	TYPE	MIN	AMOUNT
01	05-07	LOCKHART TX	512-384-	11:00AM	A	1	.10
02	05-07	LOCKHART TX	512-384-	11:01AM	A	6	.50
03	05-07	LOCKHART TX	512-384-	11:13AM	A	6	.50
04	05-07	LOCKHART TX	512-384-	11:20AM	A	6	.50
05	05-07	LOCKHART TX	512-384-	11:32AM	A	6	.50
ITEMIZED CHARGES FOR 512-393-						2.10	
06	05-07	LOCKHART TX	512-384-	10:47AM	A	1	.10
07	05-07	LOCKHART TX	512-384-	10:48AM	A	1	.10
08	05-07	LOCKHART TX	512-384-	10:58AM	A	1	.10
ITEMIZED CHARGES FOR 512-393-						.30	
TOTAL OF ITEMIZED CALLS						28.0 MINUTES	2.40
9-1-1 AND POISON SURCHARGE						.01	
911 SERVICE SURCHARGE						1.00	
CITY FRANCHISE TAX						1.06	

TYPE:

A-DIRECT DIAL

B-CALLING CARD

C-COLLECT

D-GENERAL TR DEBOTH

Attachment 2
SBC Filing in TPUC Docket 24015
(excerpt)
Relating to NXX Rate Center Designation Controlling Retail
Rating



Control Number: 24015



Item Number: 151

Addendum StartPage: 0

SBC
September 17, 2004

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DOCKET NO. 24015

CONSOLIDATED COMPLAINTS AND REQUESTS FOR POST-INTERCONNECTION DISPUTE RESOLUTION REGARDING INTERCARRIER COMPENSATION FOR "FX-TYPE" TRAFFIC AGAINST SOUTHWESTERN BELL TELEPHONE COMPANY	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**SOUTHWESTERN BELL TELEPHONE L.P. d/b/a SBC TEXAS'
RESPONSE TO AT&T COMMUNICATIONS OF TEXAS, L.P.,
TCG DALLAS AND TELEPORT COMMUNICATIONS OF HOUSTON, INC.'S
MOTION FOR RECONSIDERATION AND/OR CLARIFICATION**

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DOCKET NO. 24015

CONSOLIDATED COMPLAINTS AND	§	PUBLIC UTILITY COMMISSION
REQUESTS FOR POST-	§	
INTERCONNECTION DISPUTE	§	OF TEXAS
RESOLUTION REGARDING	§	
INTERCARRIER COMPENSATION	§	
FOR "FX-TYPE" TRAFFIC AGAINST	§	
SOUTHWESTERN BELL	§	
TELEPHONE COMPANY	§	

**SOUTHWESTERN BELL TELEPHONE L.P. d/b/a SBC TEXAS'
RESPONSE TO AT&T COMMUNICATIONS OF TEXAS, L.P.,
TCG DALLAS AND TELEPORT COMMUNICATIONS OF HOUSTON, INC.'S
MOTION FOR RECONSIDERATION AND/OR CLARIFICATION**

COMES NOW, Southwestern Bell Telephone, L.P., d/b/a SBC Texas ("SBC Texas"), and files this Response to AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications of Houston, Inc.'s (collectively "AT&T") Motion for Reconsideration and/or Clarification, filed on September 7, 2004.

**I.
SUMMARY**

The Texas Public Utility Commission's ("Commission") August 16, 2004 Order Approving in Part, Reversing in Part and Modifying Revised Arbitration Award (the "Order") contains the correct rulings regarding the intercarrier compensation applicable to FX and FX-type traffic. In this proceeding, the Commission adopted "access charges" for traffic bound for an end user customer using a "Foreign Exchange" ("FX") number, which gives the customer the appearance of a "local" number even though the customer is located outside the local calling area of the party dialing it.¹ In attempting to

¹ In its Motion for Clarification or Reconsideration, SBC Texas asked the Commission to clarify that access charges should also apply to certain calls originating from the FX telephone number back to the local calling area from which the FX NPA-NXX was assigned. See AT&T's Post-Hearing Reply Brief at 4 (August 17, 2001) (Acknowledging that "the record demonstrates that some customers purchase FX-type services for outbound calling . . .") (citing Hearing Tr. at 280:13 – 282:6 (AT&T Witness Schell)).

consistent with federal law. AT&T's request for "reciprocal compensation," as well as its tortured interpretation that would require only terminating access charges, seeks the type of windfalls that the FCC has repudiated as contrary to federal policy.

Though the Commission did not specifically address the Arbitrators' findings on DPL Issue No. 1 regarding the classification of FX-type traffic, the Commission rejected the Arbitrators' finding that the *ISP Remand Order* applied to traffic that fell outside the local calling area. SBC Texas' prior reasoning that such traffic is interexchange access traffic is the only classification consistent with the Commission's ruling and its reliance on the *ISP Remand Order* language which "left existing compensation arrangements undisturbed with respect to non-local ISP traffic."¹⁸

A. *FX Traffic Is Interexchange (Access) Traffic.*

AT&T's continued reliance on a classification of FX traffic as exchange service is contrary to this Commission's precedent that calls outside the mandatory local calling area must be rated as intraLATA toll calls. Thus FX traffic should be classified as interexchange access. When an end user purchases basic telephone exchange service, he is offered a "mandatory" local calling area within which he may place toll free calls.¹⁹ All calls made to numbers outside the mandatory calling area are long distance or access calls for which the customer typically will incur toll charges.²⁰ Telephone numbers are identified and differentiated by their NPA-NXXs (a Number Plan Area code

¹⁸ Order at 3. The Commission's reference is embodied in *ISP Remand Order* ¶ 39.

¹⁹ ILEC local calling areas are part of the historical structure established by the Commission for telecommunications in the State of Texas. The Commission approves and regulates these local calling areas. These local calling areas may only be expanded or extended pursuant to specific Commission rules. SWBT Ex. 2 (Butcher, Direct) at 11:1-6. SBC Texas' exhibits that are part of the record in this proceeding will continue to be referenced as "SWBT Ex. X" in deference to the actual record.

²⁰ SWBT Ex. 2 (Butcher, Direct) at 6:4-13.

and an NXX central office code) based on the geographic “exchange areas” or “rate centers” with which the NPA-NXX is associated.²¹ On a retail basis, calls to an NPA-NXX associated with the same exchange as the originating NPA-NXX are toll free calls and calls made to NPA-NXXs in exchanges outside a mandatory local calling area are toll calls.²²

As its name implies, “Foreign Exchange” traffic does not occur within the same exchange. It is traffic that originates in one exchange (or rate center) and terminates in a different exchange (or rate center). Carriers offering FX service assign end users physically located in one exchange with a telephone number associated with a different mandatory local calling area from another exchange. Thus, FX service allows an end user who is located in one exchange to have a “local presence” in the foreign exchange, and all end users in that foreign exchange are able to make toll free calls to that end user.²³

For example, calls between the Fort Worth exchange and the Dallas exchange are intraLATA long distance calls (typically subject to toll charges). However, a Dallas end user can order an FX service that provides him with a Fort Worth telephone number. With this service, the Dallas end user enables all Fort Worth end users to call him toll free even though he is physically located in Dallas. While these calls “appear” local to Fort Worth end users, they are not in fact local. Indeed, the primary purpose of

²¹ The terms “rate center” and “exchange” are often used interchangeably. Rate centers and exchanges usually are a one-for-one match, with the exception of the larger metropolitan exchanges. In metropolitan areas, an exchange often includes more than one rate center, but all calls to NPA-NXXs within the exchange are considered local calls on a retail basis. SWBT Ex. 2 (Butcher, Direct) at 6:9-13.

²² SWBT Ex. 2 (Butcher, Direct) at 6:9-13.

²³ SWBT Ex. 2 (Butcher, Direct) at 4:19-22; 5:1-6.

FX service offerings is to give subscribers a local presence in a foreign exchange that has a different local calling area to encourage inbound toll-free calling from that foreign exchange. FX calls, therefore, typically bypass toll that would otherwise be revenue to the local exchange carrier who serves the originating end user. That is precisely why this traffic is properly classified as interexchange long distance (access) traffic.

As the Nevada Commission observed: "A local call is based on the physical location of the originating and terminating parties To define a local call based upon the rate center of the NXX codes as proposed by [CLECs] would subvert industry custom and practice. It could allow them to avoid access charges for toll calls and interLATA calls as well."²⁴

The Nevada Commission's holding comports fully with FCC pronouncements on this subject:

state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECS.²⁵

The FCC's use of the word "geographic" clearly demonstrates that the physical originating and terminating points of the call determine whether reciprocal compensation charges are applicable.²⁶ The geographic local exchange boundaries established by

²⁴ See SWBT Ex. 17, Nevada Award, at ¶ 64. In re *Petition of PAC-WEST TELECOMM, INC. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Nevada Bell*, Nevada Public Utilities Comm. of Nevada, Docket 98-10015 (March 4, 1999).

²⁵ In the *Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order* ("First Report and Order") (rel. August 8, 1996) at ¶ 1035 (emphasis added).

²⁶ SWBT Ex. 2 (Butcher, Direct) at 10:26-28.

jointly completing that call.⁴⁰ In an FX serving arrangement, an FX subscriber is provided with a value-added service that allows him to make calls “locally” into a foreign exchange and allows all end users within that foreign exchange to call that subscriber toll free.

There is no dispute in this proceeding that the FX service provider is the only carrier that has the ability to obtain retail revenue for these calls.⁴¹ There also is no dispute that end users calling into FX arrangements avoid paying toll charges that, without the FX arrangement, typically would have been paid to the originating carrier. Likewise, because FX providers like AT&T unilaterally create these calling arrangements, it should go without saying that they are the cost-causers of this traffic. However, AT&T actually claims that “it is the originating end user, not the terminating end user (*i.e.*, the ISP), who is ‘improperly’ avoiding paying switched access charges via toll rates (because the ISP is already exempt from such charges, but the originating caller is not).”⁴² SBC Texas is not asking for either end user to pay access charges. But for the FX service provisioned by AT&T, the predominance of FX calls would otherwise be interexchange access calls for which the originating carrier would receive toll or access charges. The carrier providing the FX service—having the sole ability to obtain revenue from its subscriber for the inbound toll free calling from other end users

⁴⁰ SWBT Ex. 3 (Gonterman, Direct) at 20:8-11.

⁴¹ The CLECs argued that the retail revenue for local exchange service provides the revenue for SBC Texas to pay reciprocal compensation for this traffic. However, those revenues arise from providing the local exchange service, not LATA-wide or nation-wide toll free calling. AT&T now contends that SBC Texas should bill its originating end users for toll calls to its FX subscribers.

⁴² AT&T Motion for Reconsideration at 29.

that it has unilaterally created—should have the responsibility to pay access charges to the originating carrier who has lost toll revenue.⁴³

A. *This Commission Has Already Established That FX Traffic Is Subject To Access Charges, Not Reciprocal Compensation.*

In two recent decisions, this Commission has also applied access charges to FX-type traffic. In the ASAP Paging Docket, the Commission concluded that a call to one of ASAP Paging's ISP customers in Austin by a CenturyTel customer in San Marcos is outside the expanded local calling service area and is a toll call.⁴⁴ The Commission followed this precedent in the Level 3/CenturyTel Arbitration Docket.⁴⁵ This Commission first rejected AT&T's proposal to make FX traffic subject to reciprocal compensation as early as the original Reciprocal Compensation Docket.⁴⁶ In Docket No. 21982, the Commission held "that to the extent that FX-type and 8YY traffic do not originate and terminate within a mandatory local calling scope, they are not eligible for

⁴³ CLECs argued that FX traffic would not have occurred but for the FX arrangement, and therefore the carrier would not be receiving toll revenue anyway. Speculative arguments about the psychology of end users and what percentage of traffic may have existed without FX arrangements is hardly relevant in addressing FX services. What is relevant is that other carriers' end users are in fact calling into FX arrangements and are bypassing toll that would have been paid to those originating carriers. If anything, the CLECs' argument proves too much. If those calls never would have been made in the absence of the CLECs' service offering, then reciprocal compensation also never would have been required for those calls. Yet, under the CLECs' proposal, originating carriers would now be responsible for paying reciprocal compensation for a category of traffic that, but for the CLECs' retail offering, never would have existed.

⁴⁴ Docket No. 25673, Order at 7 (October 9, 2003).

⁴⁵ Docket No. 26431, Arbitration Award at 33-35 (March 11, 2004).

⁴⁶ Additionally, the state commissions of Nevada, Maine, Connecticut, Wisconsin, Oklahoma and Illinois have also ruled that FX traffic is interexchange traffic not subject to reciprocal compensation. See SWBT Exhibits 15-19 and SWBT's Initial Post-Hearing Brief, Exhibit A (Illinois Decision). For example, the Wisconsin Commission held that foreign exchange service is not local service, and "to the extent the facility necessary to provide FX service crosses the boundary of a customer's local service area, the service is not local and the additional charges [proposed by Ameritech] to provide the service are reasonable." SWBT Ex. 15, Wisconsin Arbitration Award, Docket 05-MA-120, at 132; see also SWBT Ex. 16, Oklahoma Order, Cause No. PUD 200000587 at 13 (holding FX traffic must be identified separately from local traffic because it is not subject to reciprocal compensation).

The FX service provider, exactly like the 8YY service provider, is the only carrier capable of obtaining a retail revenue source for the FX service and, therefore, should be the responsible party for compensating the originating carrier for the FX traffic. Because 8YY and FX perform the identical function—passing on toll savings to originating end users—it is only appropriate to apply the same intercarrier compensation to both forms of traffic.⁶⁰

D. FX Arrangements Unilaterally Alter The Local Calling Scope Of The Originating Carrier's End Users.

AT&T's and other CLECs' provisioning of FX services alters the local calling scopes of SBC Texas end users.⁶¹ SBC Texas does not dispute that all carriers are free to define the retail calling scope of their own end users.⁶² SBC Texas does not even dispute that CLECs are free to alter the local calling scope of SBC Texas end users in FX arrangements provided that the appropriate intercarrier compensation is applied to this traffic.

Local calling scopes of a carrier's end users are addressed in the CLECs' existing interconnection agreements, which states in relevant part as follows:

The Parties agree that, notwithstanding the classification of traffic under this Agreement, either Party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users.⁶³

This language reflects nothing more than the simple fact that, on a retail basis, a CLEC can offer its customers local calling anywhere in the state. But nothing in this

⁶⁰ SWBT Ex. 3 (Gonterman, Direct) at 13:7-9.

⁶¹ The CLECs' creation of FX services also unilaterally alters the local calling scope of the end users of other carriers who purchase switching from SBC Texas on an unbundled or resold basis.

⁶² See Docket No. 21982; Revised Arbitration Award at 18.

⁶³ Attachment 12, Section 1.1 of the T2A. See also, AT&T's Interconnection Agreement at Attachment 12, Section 1.5.